



NORTH CAROLINA
OFFICE OF THE GOVERNOR

MEMORANDUM

TO: Kristi Jones
FROM: Julia White
SUBJECT: DEQ-Environment Meeting
COPY: Carol Young, Eric Wilson

EVENT DATE: July 11, 2017

APPEARANCE TIME: 12:00 AM – 01:00 PM

EVENT DETAILS

Name of event:	Environmental issues meeting
Location:	Executive Residence
Who is hosting?	Governor's Office
Invited by:	Julia White
On-site contact:	Julia White
Governor's staff attending:	Julia White, Jenni Owen, Jeremy Tarr
Meeting Attendees?	Secretary Regan, Mary Penny Kelley, DEQ

BACKGROUND: This is working lunch discussion with the Secretary regarding some pending issues, and any others he or you would like to add. Suggested for today:

- Renewables bill; Aquaculture bill
- Paris Accord action items
- Offshore oil drilling, seismic testing, leases

We would like to discuss DEQ issues during this hour, including:

1. Consideration of the following bill:

HB589 Competitive Energy Solutions for NC (Renewables) institutes a moratorium on new wind energy permits retroactive to January 1, 2017, to December 31, 2018 (due to Harry Brown amendment), creates a competitive bidding process for solar developers, reforms NC's interpretation of PURPA, and puts in place a solar leasing program permitting customers to work with private parties.

The bill passed the House 66-41 and passed the Senate 36-4. Markus Wilhelm of Strata Solar (with reluctance) and Steve Levitas of Cypress Creek urge signature. NC Sustainable Energy Association has members on both sides, not sure they'll take a stand. Bruce and Nancy Thompson urge veto because of wind moratorium, arguing it constitutes a taking for Weyerhauser which has leased land to wind developers. Republicans Szoka, Arp, and Watford are the primary sponsors.

SB410 Marine Aquaculture Development Act establishes a program for the Secretary of DEQ to grant marine aquaculture (rearing marine aquatic species in controlled environments including ocean ranching, marine hatcheries, and fish farming operations) leases subject to certain criteria and requires termination of the lease under certain circumstances, requires DEQ's Division of Marine Fisheries to request the issuance of federal rules to allow marine aquaculture in federal waters off the coast of North Carolina, establish email accounts for all Marine Fisheries Commission members for public records purposes, and authorizes DEQ to negotiate an agreement with federal government agencies for NC to assume responsibility for acquiring dredged material easement sites appropriate for maintenance dredging of the Atlantic Intracoastal Waterway. Passed the House 91-21 and passed the Senate 46-0. Republicans Cook, Sanderson, and Tillman are the primary sponsors.

2. Continued action on Paris Accord; consideration of Governor's Climate Alliance:

We have several requests to join this group, which is similar to Paris Accord but focused on governors rather than municipalities, counties, industry, etc. Summary of Alliance below:

Governors' United States Climate Alliance

The United States Climate Alliance is a bipartisan coalition of U.S. states and territories committed to upholding the goals of the 2015 Paris Agreement on climate change. Members of the Alliance will collaborate to ensure that the U.S. continues to contribute to the global effort to address climate change.

The Alliance was established on June 1, 2017 following the federal government's decision to withdraw the U.S. from the Paris Agreement. Governors Andrew Cuomo, Jay Inslee and Jerry Brown established the Alliance as co-chairs. The Alliance currently consists of 13 members: California, Connecticut, Delaware, Hawaii, Massachusetts, Minnesota, New York, Oregon, Rhode Island, Vermont, Virginia, Washington, and Puerto Rico. **(11D, 2R). Not joined but requested to join: MT, NC, PA, WV, LA**

The Alliance now represents **XX** million people and **XX** trillion USD in GDP.

United States Climate Alliance Principles

States are taking up the mantle of leadership in addressing climate change: Alliance members recognize that climate change is an existential threat to our states, our economies, and the health and prosperity of our citizens, and we are committed to protecting our communities from this threat.

State climate action is benefitting our economies and strengthening our communities: Alliance members are growing our clean energy economies and creating new jobs, while reducing air pollution, improving public health, and building more resilient communities.

States are showing the nation and the world that ambitious climate action is achievable: Despite the U.S. federal government's decision to withdraw from the Paris Agreement, Alliance members are committed to supporting the international agreement and are pursuing aggressive climate action to make progress toward its goals.

United States Climate Alliance Commitment

Each member state commits to:

- **Implement** the goals of the Paris Agreement to reduce greenhouse gas emissions by at least 26-28 percent below 2005 levels by 2025;
- **Track** and report progress to the global community in appropriate settings, including when the world convenes to take stock of the Paris Agreement; and
- **Accelerate** new and existing policies to reduce carbon pollution and promote clean energy deployment at the state and federal level.

3. **Offshore oil drilling and related comments on seismic testing and oil leases.** Schedule shared by DEQ as follows. For background, DEQ did not take the first action (July 6 consistency review) but included here for background:
 - **July 21:** Deadline to submit comments on the Incidental Harassment Authorizations. DEQ plans to submit comments expressing concern on impacts to marine mammals.
Significance of State Action: NOAA-NMFS may deny the IHA or limit seismic surveys within NC if comments demonstrate more than a minimal harm to marine mammals.
 - **August 17:** Deadline to submit comments on the Request for Information on a new National Outer Continental Shelf Oil and Gas Leasing Program that will run from 2019-2014 and replace the existing 2017-2022 Program. *Significance of State Action: Bureau of Ocean and Energy Management could exclude NC from the oil and gas program for this time period so that no leases would be auctioned off the shore of NC.*

- After the RFI, the Bureau of Ocean and Energy Management prioritizes lease blocks and issues a Notice of Sale that will have a 60-day public comment period and a concurrent 60-day comment period for the Governor
 - After the Notice of Sale, there is a State Consistency Determination that runs for 60 days
 - After State Consistency, there is a Final Notice of Sale at least 30 days prior to the sale
 - Then, bidding, evaluation of bids, and issuance of a lease block for 5-10-year period
 - Then, well permitting process that has a consistency coordination and a public review period
- **No date certain:** Review new studies (zooplankton study just issued) and review any changes in projects to determine if consistency determinations should be revisited.
- **(DEQ did not submit) July 6:** Deadline to request consistency review on incidental harassment authorizations (IHA) of marine mammals during seismic surveys. In 2014-15, we had an opportunity to request review on IHA, but did not do so. If we request consistency review on IHA now, it would affect only two (2) companies, not all of them. We are preparing a draft request for consistency review to meet tomorrow's deadline. We requested and were denied an extension this afternoon. We do not have a specific state standard related to marine mammals so we will need to make a case that marine mammals have a geographic nexus to state waters as one of our state marine resources (beyond merely passing through state waters). *Significance of State Action: If NMFS authorizes a consistency review and NC finds a project inconsistent with state law and standards, my understanding is that it cannot proceed, but must instead go to mediation and/or litigation.*
 - The discussion on consistency gets confusing quickly because in 2014-15 we requested and received authorization to conduct consistency reviews on seismic survey permits – a precursor to incidental harassment authorization. Four (4) companies came forward and submitted projects to our Division of Coastal Management for review to determine if they were consistent with state law and guidance. We issued a letter to each company expressing three concerns and one condition. The concerns were on (1) impacts essential fish habitat designated by National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS); (2) user conflicts during fishing tournaments and other seasonal events; and (3) following mitigation measures outlined in the 2014 programmatic environmental impact statement. On top of the concerns, we placed a condition that any company wishing to proceed with a seismic survey must meet with the Division of Coastal Management to provide detailed information on the location and timing of the surveys. The letters were similar in content so I've attached the one to CGG for your reference. One company, CGG, has requested a pre-survey meeting, but it has not yet been scheduled and CGG says it is not in a hurry.
 - At least one of the companies seeking an IHA has not submitted their project for consistency review under a seismic survey permit, so that company cannot proceed unless and until they obtain a consistency determination from our Division of Coastal Management.

Draft Talking Points in Opposition to Offshore Oil and Gas (MPK)

North Carolina's coast is a priceless and unique resource to its people. We cannot jeopardize it for the development of oil and gas that could damage the resource and may never provide a local benefit.

Visitors come from across the world to admire our outer banks and shores, play in the ocean and sounds, and enjoy our seafood. According to the National Ocean Economics Program, the 2013 North Carolina ocean economy contributed \$2.1B to the gross domestic product, 43,385 jobs and \$820M in wages. Any type of oil spill would damage our coastal economy.

Besides an incredible coastline, North Carolina can boast of incredibly productive and essential fish habitat in its offshore waters at such colorfully-named places like The Point, Ten Fathom Ledge, Big Rock, Shoals of Cape Lookout, Cape Fear and Cape Hatteras. Our regional fisheries council, the South Atlantic Fishery Management Council, recognizes these areas as Essential Fish Habitat and Areas of Particular Concern. In 2015, the Council voiced concern in its policy guidance about seismic testing and drilling in the Atlantic. As a baseline figure, in 2013, recreational fishing provided an estimated additional \$1.6B in sales and 16,150 jobs. Seismic surveys, drilling platforms, pipeline and tanker ships all create user conflicts that will prevent fishing in the surrounding areas.

There is no reason to harm our coastal economy for a trade-off on energy when North Carolina has become a national leader in solar energy and continues to develop its renewable energy production. [statistics on renewables?] Our renewable energy portfolio can lead to energy independence just as surely as traditional oil and gas, but without the difficult capital construction in deep water and without the ever-present risk of toxic leaks and spills.

Damage

- Degradation of natural resources
 - On-shore infrastructure could harden our coast in contravention of legal precedent protecting user access to the wet sand beach and natural shorelines
- Disruption of fishing / fisheries
- Damage to coastal fisheries and hunting grounds would have a major impact on business in the state, and numerous groups, including the [[HYPERLINK "http://usa.oceana.org/sites/default/files/662/safmcenergypolicydec1415.pdf"](http://usa.oceana.org/sites/default/files/662/safmcenergypolicydec1415.pdf)] and [[HYPERLINK "http://www.mafmc.org/newsfeed/2016/council-announces-policies-on-non-fishing-activities-that-threaten-fish-habitat"](http://www.mafmc.org/newsfeed/2016/council-announces-policies-on-non-fishing-activities-that-threaten-fish-habitat)] Fishery Management Councils have voiced concern about seismic testing and drilling in the Atlantic.
 - South Atlantic Fishery Management Council (NC, SC, GA, and east coast of FL to Key West) issued policy guidance in 2015 to avoid and minimize impacts to offshore and coastal waters, riverine systems, and adjacent wetland habitats, including: waters and benthic habitats in or near drilling and disposal sites or other energy development sites; exposed hardbottom in shallow and deep waters; coastal wetlands and coastal inlets; riverine systems and associated wetlands; and intertidal oyster reefs, and identified at least 13 species and their essential fish habitat as potentially affected by federal management of proposed OCS waters.

- Mid-Atlantic Fishery Management Council (NC, VA, MD, DE, PA, NJ, NY) issued policies on non-fishing activities and projects that impact fish habitat including policies specific to offshore oil, liquefied natural gas, marine transport, and coastal development.
- That concern was only heightened when a new study came out late last week, showing that micro-organisms—such as plankton—are damaged by seismic testing.
 - [<https://www.nature.com/news/air-guns-used-in-offshore-oil-exploration-can-kill-tiny-marine-life-1.22167>] published in *Nature Ecology and Evolution* found that the mortality rate for plankton is two to three times higher during seismic testing. These findings are particularly worrisome given the critical role plankton play in the ocean's food chain.

Unnecessary

- Ports in other states larger for tankers
- Refineries in northeastern states larger
- North Carolina has a thriving sector of renewable energy that can create energy independence in a safer and cleaner way.
- Coastal communities almost unanimously against it

Uncertain

- Uncertain revenue to the state, particularly if oil and gas tanked away → all of the risk without any of the benefit
- Uncertain jobs – could be out of state; out of country
- No workforce trained to support the industry
- Goes into national supply, not NC
- Comparison of volumes off NC versus Gulf, Alaska, California – orders of magnitude smaller
- Protecting public trust
- New area of regulation for utilities – if onshore facilities

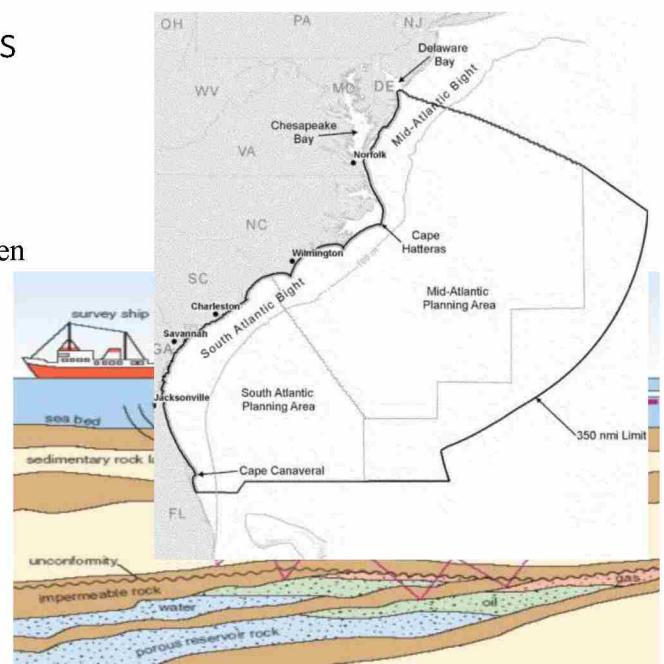
Seismic Testing for Offshore Oil and Gas

Policy Brief by Mary Penny Kelley

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Issue

The federal government is resuming the process to open offshore federal waters to oil and gas drilling and North Carolina may comment on the authorizations related to incidental harassment of marine mammals by seismic surveys. A seismic survey identifies rock layers beneath the sea floor to delineate drilling



targets. Seismic profiles are collected by sending compressed air sound waves to the ocean floor and measuring the time it takes for the sound waves to reflect off the rock layers and be recorded by sensors being towed behind the vessel. There is concern that sound waves may harm or disturb marine mammals and other marine resources. On June 6, 2017, the National Marine Fisheries Service issued a notice of five proposed authorizations to take marine mammals incidental to geophysical surveys being prepared for offshore oil and gas along the Atlantic Coast. Comments are due no later than July 6, 2017. This action is part of the federal re-engagement on offshore oil and gas development since the Atlantic Program Area had been removed from the 2017-2022 Outer Continental Shelf Oil and Gas Leasing Program. Because the Atlantic Program Areas had been removed in November of 2016, not denied, a significant amount of work has already been undertaken and the McCrory administration signaled North Carolina's support for offshore drilling despite near unanimous opposition by our coastal communities.

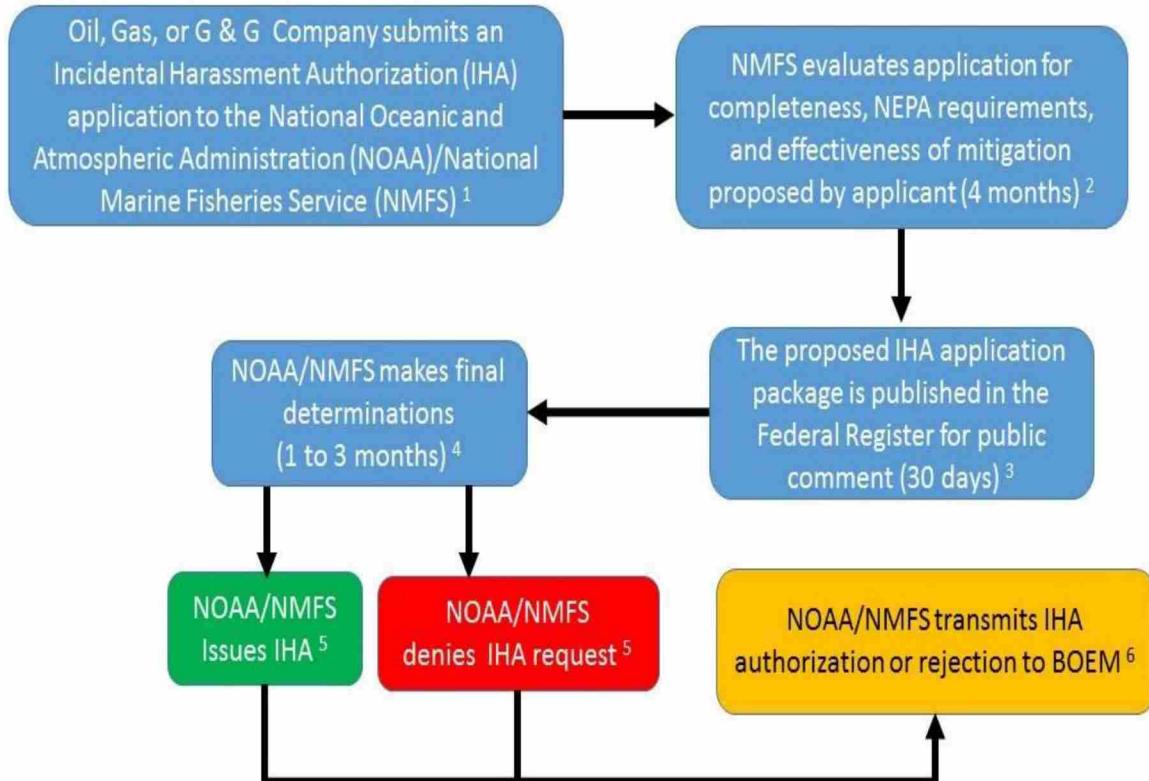
2015 Coastal Consistency Determination

Some of the work undertaken in 2015 included the state's consistency determinations under the federal Coastal Zone Management Act. Since seismic surveys were not previously identified as an activity to be reviewed by the state's coastal program, DEQ requested and the federal agency allowed it to review certain (4 of the 6) seismic survey proposals using general state coastal policies approved by the National Oceanic and Atmospheric Administration. By applying the general policies, the DEQ's Division of Coastal Management determined that there were reasonably foreseeable coastal effects from the seismic surveys, specifically to commercial and recreational fishing industries that occur more than 3 miles offshore from north of Oregon Inlet to the South Carolina state line. Ultimately, DEQ's Division of Coastal Management found the seismic survey proposals consistent with the policies of the state's approved coastal management program, but because of the uncertainty over timing and locations as well as the limited nature of the data and research on impact, strongly recommended

- Relocating surveys to avoid fishery areas including The Point, Ten Fathom Ledge, Big Rock, Shoals of Cape Lookout, Cape Fear, and Cape Hatteras.
- Timing surveys to avoid potential use conflicts with commercial fishing and recreational fishing including offshore tournaments and seasonally-focused fishing
- Following mitigation measures outlined in the 2014 environmental impact statement

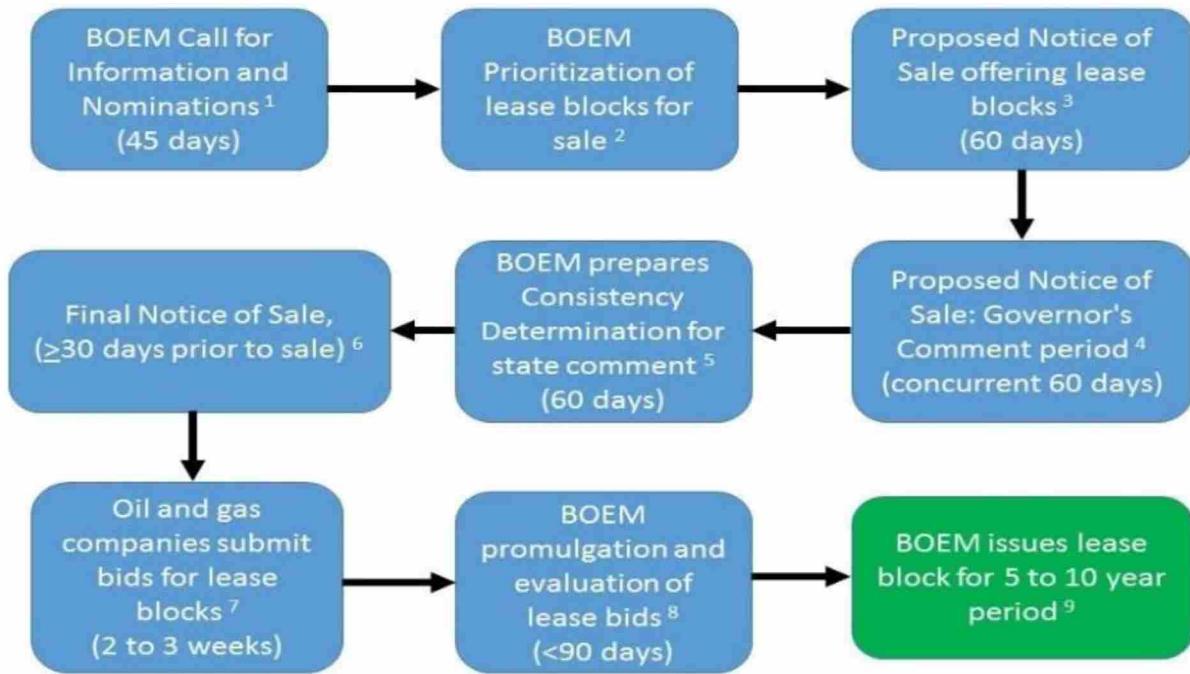
To ensure adequate communication, the consistency determination was conditioned upon a pre-survey meeting so that precise survey transects and timing can be reviewed and discussed in advance to avoid, minimize and mitigate any possible impacts or conflicts. On June 23, 2017 the Division of Coastal Management received their first request to coordinate a pre-survey meeting from MCNV Marine North America CGG.

Action Points in Oil and Gas Timeline



Geological and Geophysical Permitting

The National Marine Fisheries Service Incidental Harassment Authorization is part of the Bureau of Ocean and Energy Management's Geological and Geophysical Permitting process. Even if permits are granted for G&G activities, there are several more steps involving the approval of a 5-Year Lease Program, Lease Sales, Exploration and Development & Production.

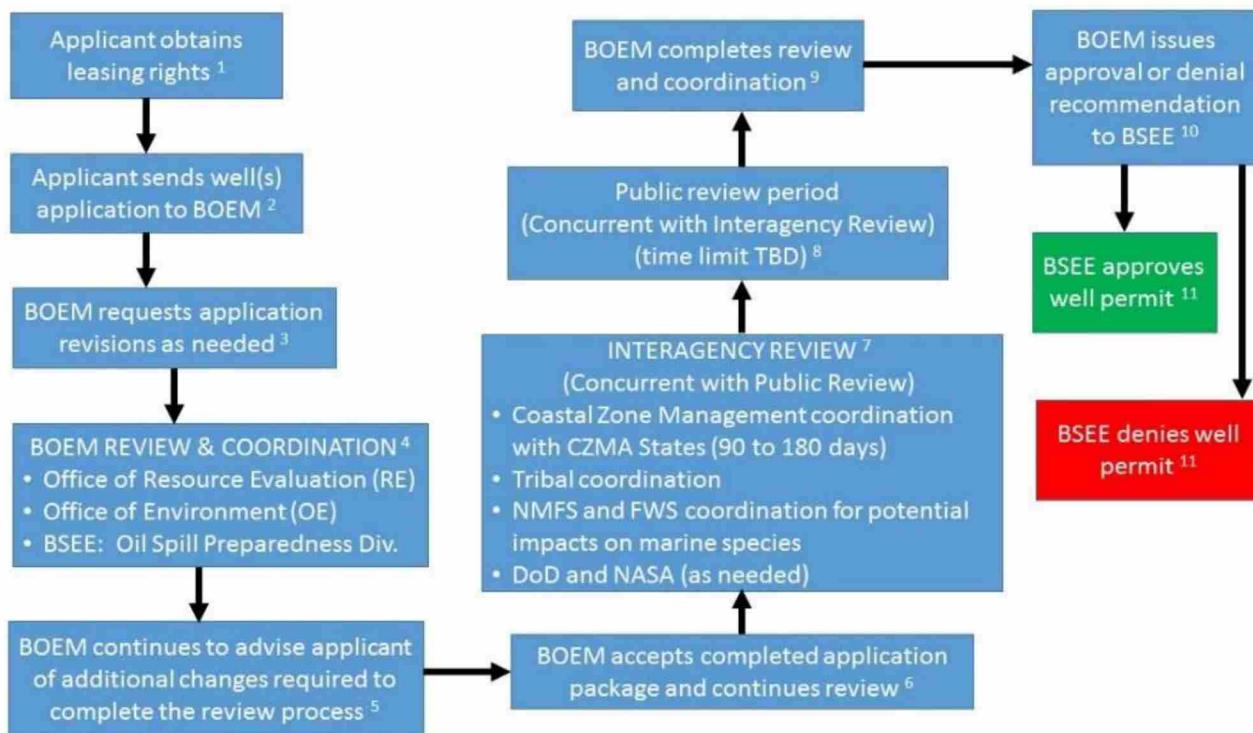


Mineral Rights Leasing

In Mineral Rights Leasing, there will be additional points of action for North Carolina to participate including another consistency determination and a comment period.

Oil and Gas Well Permitting

After a mineral rights lease is obtained, oil and gas well permits would need to be obtained. NC will again participate through a consistency determination and public comment.



In addition, there will also be decision points depending on whether the oil and gas is delivered to tanker ships and moved by water or whether it is transported onshore. If brought onshore, various state permits would be required to construct a pipeline and, possibly, a refinery.

Renewal of Five Year Program

The federal government may also revise its Five Year Program to open leasing of federal waters off the shore of North Carolina that were excluded in the last administration. The Outer Continental Shelf Lands Act requires the Secretary of the Interior to periodically revise and maintain an oil and gas leasing program. The revision is commonly known and referred to as the Five Year Program and it sets out a schedule of proposed lease sales determined to best meet national energy needs for the next 5 years. It also requires a multi-step process to be followed:

1. Initial solicitation of information and comments through a publication in the Federal Register
2. Development of a draft leasing program, a proposed leasing program, and a proposed final leasing program
3. Submittal of the proposed final leasing program to the President and Congress
4. Secretarial approval of a final leasing program

As part of this process, the Bureau of Ocean and Energy Management will prepare a Programmatic Environmental Impact Statement in accordance with the National Environmental Policy Act.

North Carolina's engagement in this process typically starts with a letter from the Secretary of the Interior to the Governor. In the past, the letter has outlined the process and requested information concerning

1. Specific laws, goals, and policies of North Carolina that should be considered during the preparation of the next 5-year program
2. How the 5-year program, as part of a domestic energy policy, could have an effect on the economic and social well-being of North Carolina constituents
3. What effect any potential Outer Continental Shelf oil and gas development activity could have on the marine, coastal and human environments of North Carolina

Near-term Action Options

- Comments on four active National Marine Fisheries Service reviews of Incidental Harassment Authorizations (IHA) due July 6, 2017: requesting no comment, support, caution or opposition
- Potential to request supplemental consistency determinations for the four marine geophysical surveys in the Atlantic Ocean off North Carolina
 - If proposed project is modified: state can request supplemental consistency determination pursuant to 15 CFR 930.66
 - If significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource are identified, state can request supplemental consistency determination
- Five-Year Program
 - Prepare response to a new Five Year Program

Sources

- *Takes of Marine Mammals Incidental to Specified Activities: Taking Marine Mammals Incidental to Geophysical Surveys in the Atlantic Ocean*, 82 Fed. Reg. 107 (June 6, 2017).
- *North Carolina Offshore Oil and Gas Roadmap*, North Carolina Energy Policy Council, December 7, 2016.
- Letter from Braxton Davis, Director, Division of Coastal Management, N.C. Department of Environment and Natural Resources, to MCNV Marine North America CGG regarding CD15-013 – Consistency Concurrence to Conduct Marine Geophysical Surveys in the Atlantic Ocean off the North Carolina coast related to Oil and Gas Resource Development (DCM#20150008) dated May 22, 2015.
- Letter from Braxton Davis, Director, Division of Coastal Management, N.C. Department of Environment and Natural Resources, to TGS-NOPEC regarding CD15-014 – Consistency Concurrence to Conduct Marine Geophysical Surveys in the Atlantic Ocean off the North Carolina coast related to Oil and Gas Resource Development (DCM#20150021) dated June 16, 2015.
- Letter from Braxton Davis, Director, Division of Coastal Management, N.C. Department of Environment and Natural Resources, to GXT regarding CD15-009 – Consistency Concurrence to Conduct Marine Geophysical Surveys in the Atlantic Ocean off the North Carolina coast related to Oil and Gas Resource Development (DCM#20150007) dated April 23, 2015.
- Letter from Braxton Davis, Director, Division of Coastal Management, N.C. Department of Environment and Natural Resources, to Spectrum Geo Inc. regarding CD15-008 – Consistency Concurrence to Conduct Marine Geophysical Surveys in the Atlantic Ocean off the North Carolina coast related to Oil and Gas Resource Development (DCM#20150006) dated April 22, 2015.
- Letter from Sally Jewell, Secretary of the Interior, to Pat McCrory, Governor of North Carolina, dated June 12, 2014.

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